Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Policies and Rules Concerning	)	CC Docket No. 94-129
Unauthorized Changes of Consumers'	)	
Long Distance Carriers	)	

COMMENTS OF ACC CORPORATION ON NOTICE OF PROPOSED RULEMAKING

I. INTRODUCTION

ACC Corporation ("ACC"), a company with subsidiaries who resell domestic intrastate and interstate interexchange telecommunications services,[1/] by its undersigned attorneys, hereby submits its comments in response to the Federal Communications Commission's Notice of Proposed Rulemaking in the above-captioned docket. ACC agrees that carriers should communicate with consumers clearly, and thus supports the Commission's efforts to assure that consumers are not misled. Consumers benefit from informative marketing efforts. It is also in the interest of carriers to provide clear information and attract only those customers that want to change carriers, and thereby avoid expensive and time-consuming efforts to resolve disputes over carrier choice.

Although ACC supports the general intent of the primary interexchange carrier ("PIC") change rules -- requiring carriers to provide clear information to customers -- the

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1/ ACC is a parent holding company of interexchange carrier subsidiaries that resell intrastate and interstate interexchange telecommunications services by leasing telephone services from a variety of underlying carriers. ACC subsidiaries provide voice and other services to multiple residential and business users with discounts for volume and peak period use.

rules in their current form discourage not only deceptive conduct but also legitimate and reasonable marketing practices. If innovative and informative marketing practices are inhibited by overly restrictive rules, competition in the long distance market will be unnecessarily impeded.

ACC therefore supports rules, such as Section 64.1150(d), that encourage clarity and discourage ambiguity. ACC also supports prohibiting "negative option" letters of agency ("LOA"), as required by Section 64.1150(e). These rules are sufficient, however, to curb the vast majority of unauthorized carrier switches. Additional restrictions will have no added benefit and, as discussed herein, will unnecessarily restrict competition. As detailed below, the proposed rules should be clarified or changed so that the LOA need not be placed in a separate document and providers are permitted to include marketing information and other inducements with the LOA. The Commission should also clearly specify that all inconsistent state rules are preempted. Preemption will assure that there is no confusion about what requirements apply to a single PIC, and also will prevent carriers from being subjected to a potentially inconsistent patchwork of LOA requirements.

II. THE PROPOSED RULES WILL UNNECESSARILY RESTRICT LEGITIMATE AND FAIR PIC CHANGE MARKETING, AND WILL IMPEDE COMPETITION

The Commission has recognized the importance of allowing IXCs sufficient flexibility in marketing practices to obtain customers while discouraging deceptive practices which may lead to unauthorized PIC changes, by stating that: "The Commission has prescribed the content, but not the precise form, of LOAs in order to allow IXCs flexibility in their business operations while providing consumers protection against unauthorized PIC

changes."[2/] Certain of the Commission's rules have adhered to this policy. Section 64.1150(d), for example, states the general rule that LOAs must be "clear and unambiguous" and states certain information that must be included. The so-called "negative option" rule of Section 64.1150(e), is likewise reasonable, and will not impede IXC marketing efforts. The requirement that LOAs should not require customers to take affirmative action (e.g., check a box) to retain their current carrier, is reasonable and will prevent customer confusion.

However, several of the Commission's proposed rules restrict a wide variety of legitimate and fair IXC marketing practices and create more burdensome regulation than necessary in order to eliminate a limited number of deceptive practices.[3/] Rather than limiting marketing innovation by unnecessary regulations, the Commission should achieve its purpose of limiting deceptive practices by more closely tailoring its rules to target instances of specific customer harm.

The requirement that an LOA be a separate document (Section 64.115(b)) and the requirement that an LOA not be combined with an inducement of any kind (Section 64.115(c)) are not necessary to prevent customer confusion. Section 64.115(d) already requires that legible, clear, and unambiguous language including specific information be incorporated in every LOA. If the Commission enforces these requirements in specific

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2/ PIC Verification Reconsideration Order ¶ 25.

3/ The Commission's 2500 complaints were certainly not all the fault of the IXC. Some can surely be attributed to buyer's remorse or confusion between members of the same household. Moreover, this number of total annual complaints may not be unusual given the vast number of calls and contacts made each year. Although the number of complaints will never be reduced to zero, ACC supports the Commission's efforts to eliminate the most deceptive and misleading practices.

instances, it will achieve its purpose. It clearly is in an IXC's best business interest not to obtain customers who do not seek its services because the IXC will suffer negative publicity, be forced to pay the PIC change charge, and waste valuable time and resources in efforts to resolve complaints.

The Commission's requirements are more restrictive than necessary to achieve the public interest purpose of protecting consumers. An LOA is used by companies for several purposes, including ordering the requested circuits for the customer. ACC agrees that the information contained on the LOA should clearly inform the customer that his or her signature to the document will result in a change of primary interexchange carrier. However, once this "informed consent" is accomplished, companies should be permitted to place additional material on the LOA form. The requirement that the LOA be contained on a separate document would unduly restrict companies marketing efforts, limit competition in the interexchange market, and ultimately increase costs to consumers. For example, mailing a postcard that contains informative material along with the LOA, such the statement "We provide excellent service and value, and we would appreciate your business," might be construed as a violation of the proposed Commission rules. The rule, if adopted, would have a "chilling effect" on the legitimate commercial speech of carriers. In an attempt to comply with the rule, carrier would try to avoid even the appearance of any sort of inducement, at risk of being found in violation of the rule. As a result, carriers could not offer customers promotions or discounts in the LOA.

In addition to the chilling effect upon legitimate commercial speech this requirement would cause, the rule also would have the effect of increasing costs to carriers, and thus, to

consumers. The costs of printing and distributing marketing material would increase, as well as the cost of ordering circuits for customers. These costs certainly would have to be passed on to the consumer.

Thus, the rule prohibiting inducements on the same page as the LOA is overbroad, and not necessary to achieve the Commission's purpose. The requirement would serve to "chill" or eliminate entirely legitimate marketing practices. This rule would stifle legitimate competition by making it impossible for providers to offer even the simplest inducement (e.g., ten minutes of free calling) along with an LOA. The Commission should permit providers to offer such simple inducements because such promotions often are necessary to provide customers an impetus to change carriers. Such marketing practices are a fundamental form of competitive practice. The Commission should not mandate uniform marketing practices. The elimination of legitimate forms of competition is clearly not in the public interest.

The Commission should not limit all inducements. ACC recommends that the Commission clarify its rule to specify that only "deceptive or misleading" inducements are prohibited on the same page as an LOA. This clarification, along with the other proposed rules prohibiting ambiguous, illegible, or unclear language, are sufficient to protect consumers from sharp marketing practices.

III. THE COMMISSION SHOULD NOT IMPOSE ADDITIONAL REQUIREMENTS THAT WOULD FURTHER IMPEDE COMPETITION

The Commission has requested comment on several additional requirements for LOAs that ACC believes will further impede competition with no concomitant benefit to consumers.

The suggestions that the Commission prescribe the point size, text, or title of LOAs are unnecessary in light of the underlying requirements of content, clarity, and legibility.[4/] The Commission should leave such details to providers. Similarly, requiring that only the provider of the service be named as the carrier could well result in additional customer confusion.[5/] For example, a carrier may decide that customers will be more likely to subscribe to its service if the customer understands that service is provided by the reselling the services of a nationally known IXC. If a carrier determines that customers will be given more complete information by mentioning more than one carrier, such practice should be permitted. It would be contrary to the public interest to limit the dissemination of such information to customers.

ACC also believes that business and residential customers should be subject to the same requirements, as long as the requirements are reasonable for both types of customer.[6/] If an LOA is clear and legible, it should not be subject to different rules based on the type of service provided. Carriers may have legitimate business reasons to combine marketing campaigns for different kinds of services, and may not even be able to distinguish between business and residence lines (e.g., where a business operates from the home). Adoption of differing, and perhaps more onerous, requirements therefore could impose added marketing costs on IXCs and their customers. While the NPRM suggests that businesses may be less likely to send marketing material to the person with authority to make the PIC change

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4/ NPRM ¶¶ 13, 18.

5/ NPRM ¶ 14.

6/ NPRM ¶ 15.

decision, it is also possible that residential customers may have disputes regarding who within the household should authorize a change. It is possible that businesses are more likely to have established procedures for authority to make telecommunications decisions than residential consumers. The Commission has not demonstrated a reasonable basis for treating business customers differently, and thus the Commission should not establish separate, and possibly confusing, requirements. It should be sufficient to require that an LOA be clear and unambiguous.

ACC advocates that the Commission require that consumers receive clear and unambiguous information, with no deceptive inducements included in the LOA. Such a standard would promote the public interest, without impeding legitimate marketing efforts.

V. THE COMMISSION SHOULD CLARIFY THAT IT INTENDS TO PREEMPT INCONSISTENT STATE REGULATION

ACC supports a single, uniform, nationwide standard for LOAs, and therefore strongly encourages the Commission to clarify that it will preempt any inconsistent state regulation. Clearly, when a customer chooses a long distance carrier, that choice applies to both interstate and intrastate services. In fact, for many customers, they perceive no difference between such services, and increased confusion would result from disparate requirements. Case law supports the FCC's finding that "requiring the customer to retain two redundant facilities or to invest in expensive additional equipment" frustrates the FCC's responsibilities to assure a "rapid efficient, Nationwide and world-wide wire and radio communication service with adequate facilities at reasonable charges" (California v. FCC, 567 F.2d 84, 85 (1987), quoting 47 U.S.C. § 151). It would be burdensome and

unreasonable, both to customers and to carriers, to subject them to separate sign-up procedures for service, because, as a practical matter, most consumers use their telephone service on an integrated basis for both interstate and intrastate calls.

Thus, regulations affecting LOAs, are not severable into interstate and intrastate components, because the authority granted to switch the customer's primary interexchange carrier affects the customer's choice for both types of service [7/]. Therefore, FCC preemption of conflicting state regulations would be consistent with applicable law, and in the public interest, because such clarification would specify that only the Commission's rules apply to LOAs and thereby reduce customer confusion.

V. CONCLUSION

ACC supports the Commission's efforts to encourage long distance providers to clearly communicate with consumers. However, ACC supports a more specific approach that will not harm IXC competition. The Commission should not impose additional requirements that limit marketing flexibility, or impede competitive efforts to obtain customers. Onerous requirements that cause increased costs to IXCs will cause prices to consumers to increase without concomitant public interest benefits. The Commission therefore should scale back its proposed rules so as to restrict only deceptive marketing

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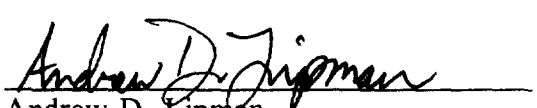
[7/] See Louisiana Public Service Commission v. FCC 476 U.S. 355 (1986) where the Supreme Court distinguished cases in which assets can be separated on a jurisdictional basis, such as depreciation methodologies for ratemaking, from cases where the courts found that its was not possible to separate interstate and intrastate components, as in the case of telephone instruments, North Carolina Utilities Comm'n v. FCC, 537 F.2d 787 (4th Cir.), cert. denied, 429 U.S. 1027 (1976), and North Carolina Utilities Comm'n v. FCC, 552 F.2d 1036 (4th Cir.), cert. denied, 434 U.S. 874 (1977).

practices without impeding the legitimate marketing efforts of the vast majority of IXCs. ACC recommends that the Commission retain Sections 64.1150(d) and (e), which require clear and unambiguous LOAs, and prohibit "negative option" LOAs. These rules are sufficient to protect consumers and the Commission should not impose additional requirements. If Section 64.1150(c) is retained, it should be revised to prohibit only LOAs that contain "deceptive or misleading inducements" on the same document as the LOA. Finally, the Commission should clarify that it intends these rules to preempt any inconsistent state rules in order to avoid regulatory confusion. ACC believes that these changes will permit the Commission to achieve its goals, without limiting IXC marketing methods.

WHEREFORE, ACC Corporation respectfully requests that the Commission revise its proposed rules as described herein.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of January 1995, copies of the foregoing document were served by hand delivery on the following:

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